THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.25418 OF 2005

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Dated: 29-11-2005

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Between

Pidugu Madhu, S/o. Venkateswarlu, R/o. Managallu Village, Buchireddypalem Mandal, Nellore District.

...PETITIONER

AND

The Deputy Registrar of Co-operative Societies, Kavali and the Divisional Cooperative Officer, Kavali, Nellore District and others.

...RESPONDENTS

ORDER:

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Petitioner questions the order of the first respondent dated 09.11.2005 disqualifying him from continuing as a member of the Managing Committee of Vavveru Cooperative Rural Bank Limited, Buchireddypalem, which is a primary cooperative society, (for short 'the society') as illegal and arbitrary on the ground that no notice has been issued and no opportunity has been afforded to him before passing the impugned order.

Heard the learned counsel for the petitioner, learned Government Pleader for the respondents 1 to 3 and Mr. P. Lingeswara Rao, appearing for the fourth respondent.

Petitioner filed his nomination seeking election to the office of the Director from the 10th segment of the said society. After due scrutiny, his nomination has been published in the valid list of nominations. During scrutiny, the fourth respondent filed objections to reject the

nomination of the petitioner on the ground that the petitioner incurred disqualification for the post of Member of the Managing Committee as he is having three children. The objections of the fourth respondent were overruled and the nomination of the petitioner was accepted as a valid nomination. The elections to the managing committee were held on 22.10.2005. The elections for office bearers were scheduled to be held on 23.10.2005, which were postponed by the District Collector by proceedings dated 23.10.2005 on the ground that he is seeking clarification from the Registrar of Cooperative Societies on the objections raised by the fourth respondent. Questioning the said action of the District Collector the petitioner filed W.P.No.23135 of 2005 and this Court by order dated 27.10.2005 in WPMP.No.29682 of 2005 directed that the elections should go no but results shall not be declared. The fourth respondent filed WVMP.No.3054 of 2005 to vacate the interim direction.
This Court by order dated 03.11.2005 made the interim direction absolute directing the respondents 1 to 3 to proceed with the elections, pursuant to which the elections were held on 05.11.2005 following due process of law but the results were not declared.

Thereafter, the impugned order has been passed by the first respondent on the ground that the petitioner has got three children which is a disqualification as laid down under Section 21-A(1A) of the Andhra Pradesh Cooperative Societies Act, 1964, (for short 'the Act') and an opportunity was given to the petitioner to submit his explanation to the objections raised by the fourth respondent and the petitioner submitted his explanation to the Election Officer on 23.10.2005.

Under Section 21-A(1A) of the Act a person having more than two children shall be disqualified for election or for continuing as a Member of the Committee. The said provision was inserted by Act No.4 of 1995 with effect from 02.01.1995. However, a person shall not be disqualified if a third child is born within one year from the date of such commencement. Therefore, a person shall be disqualified if he has more than three children after 01.01.1996. It is the case of the respondents that the petitioner has got three children after the notified date and therefore, he has incurred disqualification to continue as a Member of the Committee.

Learned counsel for the petitioner submits that if there is any dispute with regard to the election, as to whether the candidate is having more than two children or not, it shall also be treated as an election dispute under Section 61(3) of the Act read with Rule 49-B of the

Andhra Pradesh Cooperative Societies Rules, 1964 (for short 'the Rules'). Therefore, it is for the respondents to raise an election dispute and prove their contentions as to whether the petitioner is having more than two children. I am unable to accept the said contention. If any dispute relating to or in connection with, any election to the office of the President of a Society or member of the managing committee, the election dispute has to be resolved in an election petition only.

Sections 21-A and 21-A(1A) of the Act have independent provisions to disqualify any person to continue as a Member of the Managing Committee, even if he is chosen as a Member or President of a Society. Therefore, I am of the opinion that the authorities can independently make enquiry and pass an order either for choosing or for continuing a person as member of the committee.

The only question that arises for consideration as to whether any opportunity has been given to the petitioner before passing the impugned order.

Admittedly, the nomination of the petitioner for election to the President of the said society was accepted rejecting the objections raised by the fourth respondent. If the fourth respondent is aggrieved by the said action it is for him to file an election petition.
But irrespective of the fact that the said objections were overruled it is always open for the authorities to make enquiry under
Section 21-A(1A) of the Act and pass appropriate orders disqualifying the petitioner if he is having more than two children. Though it is stated that an opportunity was given to the petitioner but no notice has been issued as regards to the disqualification incurred by the petitioner under Section 21-A(1A) of the Act. The so-called opportunity said to have been given to the petitioner to submit explanation with regard to the objections filed by the fourth respondent has nothing to do with the action sought to be taken to disqualify the petitioner under Section 21-A(1A) of the Act.
As no notice has been issued, I am of the opinion that the impugned order is unsustainable as it is against the principles of natural justice.

Having regard to the facts and circumstances of the case, the impugned order is set aside and the respondents are directed to treat the same as a show cause notice giving

reasonable opportunity to the petitioner to submit his explanation within seven days from the date of receipt of a copy of this order and if any explanation is filed, the respondents may consider the same and pass appropriate final order under Section 21-A(1A) of the Act after giving reasonable opportunity to the petitioner in accordance with law.

The writ petition is accordingly disposed of with the above observations.

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V. ESWARAIAH, J

November 29, 2005

Note: Furnish C.C. of the order by 01.12.2005

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